

# NEW EXCHANGE™

[www.new-exchange.com](http://www.new-exchange.com)

## TERMS & CONDITIONS

*Applicable to Clients*

Effective from: March 2016

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The Company and the Client agree to be bound by these Terms in all circumstances where the Company agrees to provide Services to the Client, and the Client agrees to acquire those Services from the Company.

## **DEFINITIONS**

### **"New Exchange"**

Is a Trademark and business unit of Newlink Asia Ltd operated through the website [www.new-exchange.com](http://www.new-exchange.com)

### **"the Company"**

means Newlink Asia Ltd whose registered offices are at Unit 1618 - 16/F Miramar Tower 132 Nathan Rd. – Kowloon – Hong Kong S.A.R. of the People's Republic of China.

### **"the Client"**

means the person, business or company to whom consultant professional data, copies of CVs and other related information are made available and/or other services are provided by the Company or by the Consultant under these Terms for the sole purpose of considering consultants for contract work with the Client in accordance with the Candidate's wishes.

### **"Consultant"**

means the person to whom the details within a CV or Consultant record refer to, working as an independent professional (contractor) and listed on one or more New Exchange areas.

### **"Consultant Information"**

means the required rate, contact details, and any other private information provided by the Consultant to the Company, including what is shared in spoken or written form during the negotiation phase either by using New Exchange or directly.

### **"CV"**

means the brief outline (curriculum vitae or résumé) of a Candidate's education, training, skills and employment experience which is made available to the Company by the Consultant through the New Exchange

### **"Intellectual Property"**

has the meaning given to that term in clause 44.

### **"Services"**

means the service of allowing Clients to select Consultants for contract work by searching the listed Consultants database and retrieving individual records and/or copies of CVs, inviting selected candidates to be interviewed for the scope of negotiating a contract/project based assignment, the handling of timesheets and their approval cycle, invoicing and collection.

### **"Service Fee"**

means the service fee included in the rate quoted by the Consultant which is specified and agreed via the New Exchange (exclusive of any applicable taxes) or such other service fee that is agreed by the Company and the Client in writing from time to time for Services.

### **"Special Conditions"**

means the special conditions (if any) set out on an individual contract and agreed by all parties (Consultant, Client, Company)

### **"Terms"**

means these Terms and Conditions of Business.

## GENERAL

1. These Terms (together with the terms of any applicable New Exchange Form) are between the Company and the Client, and govern the obligations of both parties under any contract for the provision of the Services.
2. These Terms shall take immediate effect in substitution of all previous terms relating to the contents hereof, whether written, oral or implied between the Company and the Client.
3. These Terms are deemed to be accepted by the Client upon the completion of the online New Exchange registration form ([www.new-exchange.com/registration-client](http://www.new-exchange.com/registration-client)).
4. No variation or alteration to these Terms shall be valid unless expressly agreed and confirmed in writing by a Director of the Company.

## NEW EXCHANGE REGISTRATION

5. Prior to the activation of a client account by the Company on behalf of the Client, the Client shall submit appropriate proof supporting the registration form which shall be signed for and on behalf of the Client by a duly authorised signatory of the Client. The necessary documentation can be sent by mail, courier, fax or in electronic format (pdf file). The Company reserves the right to contact the Client to confirm the details provided.
6. No contract for the supply of Services shall be concluded until the Company has notified the Client, either verbally or in writing, that the account has been activated.

## COMPANY'S OBLIGATIONS

7. Subject to the Client's proper and timely performance of its obligations (especially payments due dates), the Company will use its reasonable endeavours to supply the Services in accordance with these Terms
8. The Company shall have the right at its sole discretion to monitor the Client activities on the New Exchange, in order to prevent any illegal activities or any other activity that is not allowed according to the Terms.
9. The Company shall have the right to suspend, temporarily or permanently, or to cease to provide the Services in any circumstances beyond its control (as reasonably determined by the Company, including but not limited to unavailability of or interruption to electrical or other power supplies, unavailability of any communication system, computer hardware or software whether through malfunction of hardware or software, damage or for any other reason).

## LICENCE

10. The Client is hereby granted a non-exclusive licence to negotiate contracts for acquiring consulting services and use the CV data and Candidate Information supplied by the Company under the contract for Services relating to the provision of CV data and Candidate Information.
11. The Licence hereby granted shall come into force on confirmation by the Company that the New Exchange Services have been activated or first use of the New Exchange Services by the Client once they have been activated by the Company, whichever is the sooner and unless earlier terminated under any provision of these Terms shall continue in force until suspension by the Company of particular Services relating to the New Exchange activity or termination of the account for whatever reason.
12. If:
  1. the Client shall be in breach of any of its obligations under these Terms;
  2. the Company suspends any of the Services relating to the provision of CV and Candidate Information; or
  3. the Company terminates any contract for Services in accordance with these Terms;this Licence shall be deemed to terminate immediately and the Company shall notify the Client as soon as practicable that the Licence has been so terminated, provided always that such termination shall be without prejudice to any rights accrued at the date of such termination. In the case of the suspension of some or all Services, the termination of the Licence shall only be in respect of the Services suspended and such Licence may be reinstated by written notice from the Company.
13. This Licence is personal to the Client, who shall not be entitled to assign it or grant any sub-licences under it.

## CLIENT'S OBLIGATIONS

14. The Client shall in all respects comply with all statutes, byelaws, codes of practice and legal requirements to which the Client is ordinarily subject in respect of its receipt and processing of CVs and Candidate Information. The Client shall ensure that it is compliant with the Privacy and Data Protection laws of its own jurisdiction.
15. The Client shall use CVs and Candidate Information received from the Company under the Licence for the sole purpose of considering the Candidate for contract work with the Client in accordance with the Candidate's wishes, as negotiated on New Exchange.
16. The Client will not use any contact details in any CV or Candidate Information to promote the services of another company or business, or any other services that the Client may offer from time to time. This obligation also relates to Candidate Information and CVs received in direct response to an advertisement placed on the Company's website.

17. The Client shall keep confidential any personal details contained within CVs or other Candidate Information received from the Company in accordance with the wishes of Candidates.
18. If demanded in writing by the Company, where the Client is in breach of these Terms, the Client will within 10 days of such request deliver to the Company or delete as appropriate, all originals and copies of documents (including CVs), records (including electronic records), originals and copies of documents based on or otherwise derived from CVs made available to the Client (including electronic records) and all Intellectual Property provided or made available to the Client pursuant to these Terms. At the same time as returning such documents and records, the Client will remove from its documents and records the details (including names, phone numbers, email address and mail address) of all Candidates. If the Company demands the return of documents and records and the deletion of Candidate details in accordance with this clause, then at the time of returning such documents and records and deleting Candidates contact details, the Client will certify in writing (to the reasonable satisfaction of the Company) that it has fully complied with its obligations under this clause. This clause survives termination or expiration of these Terms.
19. Subject to these Terms (in particular Clause 34), the Client shall not submit, copy, re-sell, transfer, or make available in any way any CVs or any Candidate Information contained therein or other Candidate Information received from the Company to any person, business or company, or other third party.
20. The Client shall pay the invoices of the Company as agreed between the Client and the Company from time to time. The Client agrees to settle invoices within the agreed terms and understands that failure to do so will result in the suspension of the active contract.
21. The Client shall indemnify and keep indemnified the Company against any costs, claims, damages, expenses and liabilities incurred by the Company, whether direct or indirect (including but not limited to legal or other professional fees and loss of profit), arising out of any claim settlement or proceeding brought by a third party as a result of the provision of the Services.
22. The Client shall be responsible for providing to the Company in a timely manner and in a form acceptable to the Company, all materials, including content and/or copy, as the Company shall in its sole opinion require to enable the Company to provide the Services.
23. Without limiting the generality of other clauses, the Client agrees to indemnify and keep indemnified the Company against all liability, loss, damages, and costs, whether direct or indirect (including but not limited to legal or other professional fees and loss of profit), arising out of any claim, settlement or proceedings brought by any third party against the Company where use or development of any Intellectual Property constitutes an infringement of copyright or any other Intellectual Property rights of a third party.
24. Upon registration and from time to time the Company will provide the Client with a unique password giving access to the Services with the Company. The Client acknowledges that they are responsible for the security of their password(s) and undertake to advise the Company immediately if they become aware their password(s) has been compromised. The Client further acknowledges that should unauthorised use of their password(s) take place they will still be liable for the cost of the Services.

## COMPANY'S CHARGES

25. The Company shall render invoices to the Client at the interval agreed in any specific contract at intervals detailing the charges payable by the Client in respect of the Services plus Taxes as required by law.
26. Invoices are payable by the Client when due save that the Company may in its sole discretion by prior written notice and subject to satisfactory trade references allow the Client an agreed period of credit, as indicated on each invoice, from the date of such invoice in which to make payment. If the Company does not receive such payments within the required period, the Company reserves the right to suspend any Services and to charge interest on all overdue amounts at a rate of 5% above the prevailing base rate of HSBC, calculated on an annual basis with effect from the due date for payment of the invoice. Services that have been suspended will only be re-activated on receipt of the full invoice amount plus the accrued interest, charged on a daily basis.
27. The Client shall pay the full amount of the invoice plus any interest payable in accordance with these Terms without any set-off or deduction. The Client shall cover any money transmission charges or exchange rate differences.
28. The Company shall not be obliged to issue any credit or make any refund in respect of charges relating to the Services in accordance with these Terms.
29. The Company shall give the Client at least 30 days' notice in writing of any amendment to the fees charged for services with the Company which amended Service Fees shall apply after expiry of the notice period.

## LIABILITY

30. Nothing in these Terms excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence.
31. Subject to clause 55:
  1. the Company shall not be liable to the Client by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of any contract, for loss of profit or for any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatever (whether caused by the Company's negligence or that of its employees, agents or subcontractors or otherwise) which arise out of or in connection with the supply of the Services (including any delay in supplying or any failure to supply the Services in accordance with any contract or at all); and
  2. the entire liability of the Company in contract, tort (including negligence or breach of statutory duty), misrepresentation (unless fraudulent) or otherwise arising in connection with the supply of the Services or resulting from their use shall not exceed an amount equal to the cost to the Client of the particular service the subject of any complaint (not including any amounts paid for previous services of that nature for which no complaint had arisen).

32. The Client shall satisfy itself as to the accuracy of information supplied by the Company, and shall take up such references as are deemed necessary for this purpose. The Company shall not be liable for any loss, damage or expense, whether direct or indirect (including but not limited to legal or other professional fees, loss of profit or other consequential loss or damage), arising out of inaccurate, ambiguous or the misinterpretation of CVs or other information.
33. The Client shall satisfy itself as to all matters concerning any statements or omissions in a CV or provided by a Candidate including as to the identity, suitability, standard of skill, integrity and reliability of Candidates whose CVs are provided by the Company, and shall take up such references as are deemed necessary for this purpose. No liability will be accepted by the Company for any loss or damage arising out of any misstatement or negligence, dishonesty, misconduct or lack of skill of Candidates.
34. The Company takes no responsibility and shall not be liable for any information or software sent by a Candidate to the Client which: contains a virus, cancelbot, trojan horse, worm or other harmful or disruptive component; which contains information, software or other material which is protected by copyright or other Intellectual Property rights (or any derivative works with respect thereto) or which contains information or material which is defamatory, obscene, offensive, in breach of confidence, threatening or otherwise contrary to any applicable law or regulation.
35. The Company has no obligation to monitor e-mails sent to the Client attaching CVs or otherwise. However, the Client confirms that the Company has the right to monitor such e-mails electronically from time to time and to disclose any information as necessary to satisfy any law, regulation or other governmental request, to operate the Services properly, or to protect itself or its subscribers. The Company reserves the right to refuse to post or to remove any information or materials in whole or in part that in its sole discretion are unacceptable, undesirable or in violation of these Terms.

## **CANCELLATION OF ACCOUNT**

36. Either party may cancel, with effect from the first day of the following month, the contract for the supply of Services by giving the other party prior notice in writing of such termination.
37. Despite the foregoing, if the Client breaches any provision of these Terms the Company may at any time terminate any contract for Services with the Client with immediate effect.
38. Despite the foregoing, the Company may at any time suspend any contract for Services or any part of a contract for Services with the Client with immediate effect.
39. The Company may terminate any contract for Services without notice if:
  1. an order is made or a resolution is passed for the winding up of the Client, or a liquidator or receiver is appointed, or if a petition is presented or a meeting is convened for the purposes of winding up the Client;
  2. an administration order is made or a petition for such an order is presented in respect of the Client;

3. a receiver (which expression shall include an administrative receiver) is appointed in respect of the Client or any or all of its assets;
  4. the Client is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986;
  5. the Client shall cease or threaten to cease to carry on its business or a substantial part thereof.
40. Upon the cancellation or termination of the account by either party, the full amount owing to the Company by the Client in respect of Services provided up to termination or cancellation shall become payable and due with immediate effect.
41. Should the cancellation of the account be due to improper or illegal use of CVs, Candidate Information or advertising services by the Client as defined herein the Company may, at its discretion and without recourse, report such action to the relevant legal and/or professional bodies including the Department of Employment, the Data Protection Registrar, ATSCo and REC.

## **ENFORCEABILITY**

42. Any contract for the supply of Services and these Terms shall be governed and enforceable by Hong Kong Law and the parties agree to submit to the exclusive jurisdiction of the Hong Kong Courts.
43. The invalidity or unenforceability for any reason of any part of these Terms shall not prejudice or affect the validity or enforceability of the remainder.

## **INTELLECTUAL PROPERTY**

44. Any Intellectual Property (including, without limitation, rights to and any interest in, any patent, design, trade mark, copyright, know how, ad-hoc processes, search algorithm, trade secret and any other proprietary right or form of intellectual property (whether protectable by registration or not), customer list, Client agreement, specification, formula, drawing, program, design, system, process, logo, mark, or style) ("Intellectual Property") which is not developed under these Terms, but which is used for the purposes of these Terms ("Current Intellectual Property"), will remain the property of its current owner.
45. Intellectual Property, including any modifications or addition to Current Intellectual Property, which is created, made or discovered by the Company in the course of the Company providing the Services, will be the absolute property of the Company without the need for any party to execute any further document, provided that nothing in this clause will vest in the Company any proprietary rights in, or prevent the Client from using, either for the Company or any other customer, any techniques, knowledge, information practices or codes which are:
1. generic in nature and were known to the Client prior to the date of these Terms; or
  2. developed by the Client during the Term of this Agreement and relate to standard practices adopted within the industry to which the Services relate.



46. The relationship between the Company and the Client is, and will be for all purposes, that of a company and independent business, and nothing in these Terms will be taken as constituting any other relationship.